IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.70 of 2000.

Reserved on:23.10.2007.

Decided on: *October 25, 2007*

H.P.Housing & Urban Development Authority …Appellant.

VERSUS

M/s.Ansysco Industrial …Respondent.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant : Mr.K.D.Sood, Advocate.

For the Respondent : Mr.G.D.Verma, Sr.Advocate, with Mr.B.C.Verma, Advocate.

Kuldip Singh, Judge

The appellant is aggrieved by judgment, decree dated 23.12.1999 passed by learned District Judge, Solan in Civil Suit No.2-S/1 of 1998 decreeing the suit of respondent / plaintiff for a sum of Rs.3,86,084/- along with interest at the rate of 12% per annum from 26.8.1997 till payment. The suit was originally filed against Himachal Pradesh Housing Board who filed the appeal against the impugned judgment, decree, during the pendency of the suit Himachal Pradesh Housing and Urban Development Authority was established in place of Himachal Pradesh Housing Board by

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[1] *Whether the reporters of the local papers may be allowed to see the Judgment? Yes*

virtue of Himachal Pradesh Housing and Urban Development Authority Act, 2004. Therefore, in the appeal Himachal Pradesh Housing Board was substituted by Himachal Pradesh Housing and Urban Development Authority vide order dated 10.5.2005 passed by this Court in the above appeal. Therefore, in this judgment appellant refers to erstwhile Himachal Pradesh Housing Board and its successor Himachal Pradesh Housing and Urban Development Authority.

2. The facts in brief are that respondent filed a suit for recovery of Rs.4,36,757 which included Rs.3,86,084 principal and remaining amount as interest at the rate of 17.5% per annum w.e.f. 23.8.1997. The respondent also claimed future interest at the rate of 17.5% per annum from the date of filing of the suit till realization of the decretal amount. The further facts are that M/s.Accurex Industries, 214, Industrial Area, Chandigarh was given a plot measuring 992.26 square meters on lease bearing No.19-E, Sector II, Parwanoo on the recommendation of the Director of Industries, Himachal Pradesh on the premium price of Rs.40 per square meter subject to minimum of Rs.39,690.40. The lease deed was executed in favour of M/s.Accurex Industries which was effective from 1.9.1979 and was registered before Sub Registrar, Kasauli on 21.9.1979. After getting the approval of Director of Industries, M/s.Accurex Industries changed the name and style of the company to M/s.Star Electronics Limited and a supplementary deed Ext.P-6

regarding plot No.19-E was executed on 8.9.1995. The assets and liabilities of M/s.Accurex Industries were taken over by M/s.Star Electronics Limited.

3. M/s.Star Electronics Limited later on applied for transfer of lease hold rights of plot No.19-E in favour of M/s.Ansysco after obtaining approval of Director of Industries Himachal Pradesh and a lease deed Ext.P-2 to this effect was executed on 10.9.1997 in favour of M/s.Ansysco which was also registered with the Sub Registrar, Kasauli.

4. The case of M/s.Ansysco Industries is that while allowing the change of name of company from M/s.Accurex Industries to M/s.Star Electronics Limited the appellant got deposited Rs.3,85,409 on 7.9.1995 vide Ext.P-5 on account of unearned increase in the value of the plot against the initial value of the plot, which was transferred. The appellant again illegally demanded an amount of Rs.4,99,325 on account of unearned increase in the value of plot for transfer of the lease hold rights in favour of respondent and consequently a sum of Rs.5 lacs was deposited by respondent on 23/26.8.1997 vide Ext.P-3. The appellant has illegally charged unearned increase of Rs.3,86,084 in excess as appellant had already taken this amount from M/s.Star Electronics Limited. The respondent has filed suit for recovery of this amount from appellant on usual rate of interest charged by the banks.

5. The suit was contested by appellant by filing written statement wherein preliminary objections of locus standi and estoppel have been taken. On merits, it has been submitted that the appellant while allowing the transfer of lease hold rights from M/s.Accurex Industries to M/s.Star Electronics was asked to deposit a sum of Rs.3,85,409 on account of unearned increase in the value of the plot as per terms of the lease deed executed between the appellant and M/s.Accurex Industries and the said amount was deposited. Thereafter a request was received from M/s.Star Electronics Limited for transfer of lease hold rights in favour of M/s.Ansysco Industries and it had also made a request to inform about the unearned increase and enhanced amount of compensation as required to be deposited vide its letter dated 22.8.1997. In these circumstances, appellant asked the respondent to complete the formalities and to deposit amount of Rs.4,99,325 on account of unearned increase in the value of plot. The respondent accordingly deposited a sum of Rs.5 lacs and the lease deed was executed between Star Electronics Ltd. and appellant. The claim of Rs.4,99,325 has been defended by appellant under Clause 2(v)(a) of the lease deed executed between the parties.

6. The appellant has further submitted that the market value of the plot in the year 1997-98 was Rs.1100 per square meter and after deducting the premium which had already been paid at the rate of Rs.93.56 per square meter, the appellant claimed 50% of the

amount as unearned increase and, therefore, amount of Rs.4,99,335 was demanded which was deposited by the respondent. The appellant has submitted that amount which was deposited earlier by M/s.Star Electronics Ltd. on account of transfer charges under Clause 2(v)(a) from M/s.Accurex Industries to M/s.Star Electronics Ltd. was not required to be deducted. On these grounds, the appellant refuted the claim of the respondent.

7. The trial Court framed the following issues:-

i) Whether the suit amount is due to the plaintiff from the defendant as taken excess by the defendant from the plaintiff, as alleged? OPP

ii) Whether the plaintiff is entitled to interest on the suit amount. If so, at what rate? OPP

iii) Whether the plaintiff has no locus standi to sue? OPD

iv) Whether plaintiff is estopped by own acts and conduct to file the suit? OPD

v) Relief.

The issue No.1 was decided in favour of respondent / plaintiff, while deciding Issue No.2 interest @ 12% per annum was awarded in favour of the respondent. The Issues No.3 and 4 were decided against the appellant and ultimately suit was decreed, as noticed above.

8. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellant has submitted that learned District Judge has erred in decreeing the suit of the respondent. The appellant is entitled to recover unearned increase at the time of transfer of the plot in question under Clause 2(v)(a) of the lease. The appellant has rightly demanded Rs.3,85,409 and Rs.4,99,325. The learned District Judge has mis-interpreted Clause 2(v)(a) of the lease. The learned counsel for respondent has supported the impugned judgment and decree.

9. The suit has been filed for the recovery of Rs.3,86,084 principal amount along with interest at the rate of 17.5% per annum w.e.f. 23.8.1997. It is the contention of the respondent that appellant while allowing the change of name of company from M/s.Accurex Industries to M/s.Star Electronics Ltd. got deposited Rs.3,85,409 vide Ext.P-5 dated 7.9.1995 on account of unearned increase in the value of plot. The appellant again demanded Rs.4,99,325 on account of unearned increase for transfer of lease hold rights in favour of respondent and accordingly respondent deposited a sum of Rs.5 lacs vide Ext.P-3 on 23/26.8.1997. The respondent has contended that appellant has illegally recovered Rs.3,86,084 in excess from respondent inasmuch as appellant had already recovered unearned increase of the plot amounting to Rs.3,85,409 vide Ext.P-5. Therefore, the respondent has filed suit for recovery of Rs.3,86,084 along with interest. The appellant has

defended its action for payment of unearned increase on both the occasions under Clause 2(v)(a) of the lease deed which is as follows:-

> "v(a): The lessee shall not sell, transfer, assigns or otherwise part with the possession of the whole or any part of the Industrial plot except with the consent in writing of the lessor which he shall be entitled to refuse in his absolute discretion.
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> Provided that such consent shall not be given for a period of ten years from the commencement of this lease unless, in the opinion of the lessor exceptional circumstances exist for the grant of such consent.
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> Provider further that in the event of the consent being given the lessor may impose such terms and conditions as he thinks fit and the lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the Industrial plot at the time of sale, transfer assignment or parting with the possession the amount to be recovered being fifty percent of the unearned increase and the decision of the lessor in respect of the market value shall be final and binding.
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> Provided further that the lessor shall have the pre-emptive right to purchase the property after deducting fifty percent of the unearned increase as aforesaid."

The parties are not in dispute regarding clause 2(v)(a) of the lease deed. This clause authorizes the appellant to claim a portion of unearned increase in the value which is the difference between the premium paid and the market value of the industrial plot at the time of sale, transfer, assignment or parting with the possession. By virtue of this clause the appellant has been authorized to recover 50% of the unearned increase in the value of the plot.

10. The question is whether at the time of last transfer of the plot by appellant the previous transfers of the same plot and unearned increases are to be taken into consideration or adjusted or not. The purpose of clause 2(v)(a) (supra) is to give some share of unearned increase to the appellant at the time of sale, transfer, assignment or parting with the possession of the plot. The value of plot at the time of last transfer will include earlier increases of the value of the plot and therefore, whatever the appellant has received by way of unearned increase of the plot prior to last transfer those increases are to be adjusted while demanding the unearned increase of the last transfer. The purpose of above clause is not to give undue enrichment to the appellant at the time of every transfer, but to give some share in the increased value of the plot at the time of transfer etc. The appellant is an instrumentality of the State and is not expected undue enrichment at the cost of entrepreneurs. It is admitted case of the parties that appellant earlier received

Rs.3,85,409 on 7.9.1995 vide Ext.P-5 on account of unearned increase of the plot. Later on the appellant has received Rs.5 lacs on 23/26.8.1997 vide Ext.P-3 on account of unearned increase in the value of the same plot. Thus, appellant has received twice unearned increase in the value of the same plot. At the second time as against demand of Rs.4,99,325 an amount of Rs.5 lacs was deposited by respondent on account of unearned increase in the value of plot. This amount was towards the increase in value of the plot at the time of last transfer. The appellant is entitled to demand unearned increase at the time of last transfer but the appellant is bound to adjust the amount received by it on account of unearned increase of the same plot at the time of earlier transfers. The learned District Judge has rightly appreciated and interpreted the material on record including Clause 2(v)(a) of the lease deed.

11. There is another aspect of the case. The appellant vide office order dated 8.9.1995 Ext.DW-1/C permitted the transfer of lease hold rights of M/s.Accurex Industries in the plot in favour of M/s.Star Electronics Ltd. on the basis of approval granted by the Director of Industries vide letter dated 23.8.1995. The perusal of Ext.DW-1/C would show that there is no condition in the said office order to recover unearned increase of the plot but despite that the appellant demanded Rs.3,85,409 on account of unearned increase in the value of plot which was deposited vide receipt Ext.P-5. The appellant had discretion not to charge unearned increase under

Clause 2(v)(a) (supra). The appellant could very well waive of charging of unearned increase in the value of plot at the time of transfer. The appellant had not laid condition of charging unearned increase in the value of plot while granting permission for transfer in favour of M/s.Star Electronics Ltd. vide Ext.DW-1/C. The appellant executed supplementary lease deed Ext.P-6 dated 8.9.1995 in favour of M/s.Star Electronics Ltd. regarding plot No.19-E, Sector-II, Parwanoo. The perusal of supplementary lease deed Ext.P-6 would show that necessity of execution of said supplementary lease had arisen due to change of name of M/s.Accurex Industries to that of M/s.Star Electronics Ltd. The supplementary lease deed Ext.P-6 refers to letter No.HB-19.38/79-Admn.Vol-II dated 8.9.1995 which is nothing but Ext.DW-1/C. The simple change of name from M/s.Accurex Industries to M/s.Star Electronics Ltd. does not amount to transfer of plot in question by M/s.Accurex Industries to M/s.Star Electronics Ltd., therefore, on this ground also, demand and recovery of Rs.3,85,409 by the appellant is wrong and this amount requires to be adjusted. No other point was urged.

12. In view of the above discussion, the appeal is dismissed with no order as to costs.

October 25, 2007 ***(Kuldip Singh), J.***

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